UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

AIRCRAFT SERVICE INTERNATIONAL GROUP, INC. [1/]

Employer

and **Case 7-RC-22390**

A.S.I.G. EMPLOYEES ASSOCIATION

Petitioner

and

LOCAL 299, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Intervenor

APPEARANCES:

Donald J. Buchalter, Attorney, of Long Beach, New York, for the Employer.
Carl J. Schoeninger, Attorney, of Beverly Hills, Michigan, for the Petitioner.
Kurt C. Kobelt, Attorney, of Madison, Wisconsin, for the Intervenor.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds: [2/]

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[1] The Employer's name appears as corrected at the hearing.
[2] The Petitioner and Intervenor submitted briefs, which were carefully considered.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved claim to represent certain employees of the Employer. [3/]

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The primary question raised and litigated by the parties is whether the petition is barred by a collective bargaining agreement. For the reasons set forth below, I find, in agreement with the Petitioner and contrary to the Intervenor, that there is no contract bar.

The Employer, Aircraft Service International Group, Inc. (ASIG), fuels commercial aircraft and repairs ground support equipment at Wayne County's Detroit Metropolitan Airport in Romulus, Michigan. Signature Flight Support performs similar functions at the same airport. The two companies were formerly unrelated. Since about July 2001, however, they have been commonly owned by British Brake & Asbestos (BBA), a London investment company.

Signature's line storage, fuel storage, and ground handler technicians, mechanics, customer service representatives, helpers, fuelers, and cabin service employees at Detroit Metropolitan Airport are represented for collective bargaining by the Intervenor, Local 299. Local 299's most recent labor contract with Signature was effective November 24, 1998 through November 23, 2001, and extended with modifications through January 31, 2003. Signature and Local 299 are still negotiating a successor agreement.

About September 2000, ASIG entered into a written recognition agreement with Local 299 with respect to ASIG's ramp agents, fuelers, and mechanics. ASIG and Local 299 engaged in, but never completed, negotiations, and never executed a collective bargaining agreement. In November 2001, a decertification petition was filed at ASIG in Case 7-RD-3317. Local 299 argued that its recognition agreement with ASIG constituted a contract bar. The theory was

[3] The record demonstrates that the Petitioner is a statutory labor organization, in that it is an organization in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, hours, and other working conditions.

rejected, a decertification election was conducted on February 12, 2002, and a certification of results of election issued eight days later.

One of the several extensions of the 1998 – 2001 labor contract between Signature and Local 299 was executed by those parties on June 24, 2002. In that document, Signature and Local 299 agreed as follows:

> ASIG, or any entity affiliated with ASIG to which any operations covered by the collective bargaining agreement are transferred, assigned or otherwise conveyed, shall recognize Local 299 as the collective bargaining representative for all employees performing classified work under the collective bargaining agreement.

The foregoing extension was signed by Local 299 Vice President Robert Webber and Signature's legal counsel Donald Buchalter. ASIG was not recited as a party and no ASIG signatory executed the agreement. There is no evidence that ASIG, expressly and in writing, has ever accepted, approved, or assumed the terms of either the extension document or the underlying collective bargaining agreement between Signature and Local 299.

The original plan of ASIG's and Signature's common owner was to redistribute their work, so that ASIG would fuel commercial aircraft, while Signature would retain general aviation (private and corporate) customers. However, aircraft fueling services are not governed merely by contractual arrangements, but by the Wayne County Airport Authority (WCAA), which determines which company may hold the lease to provide those services. BBA discarded its original work redistribution plan out of concern that WCAA would reject the necessary lease adjustments.

Instead, BBA decided about late summer 2002 that ASIG would absorb the entire Signature operation at Detroit Metropolitan Airport. The application to have Signature's leases assigned to ASIG has been before WCAA since about August 2002. WCAA had not granted approval at the time of the hearing, although a WCAA representative wrote on January 9, 2003, that he "anticipate[d] said approval of the assignment from the Board via my office by the end of January, 2003."

If and when WCAA approves the lease assignment, Signature's entire unit of 150 employees will assertedly be absorbed into and employed by ASIG, which now employs about 100 employees in the petitioned-for classifications. However, WCAA approval is a condition precedent of the planned merger of the ASIG and

Signature workforces. The record does not disclose a timetable for completing the merger once the condition might be fulfilled.

Until that time – and at present - the two employee groups are distinct. They are employed and paid by different corporations. Their wages and benefits vary. Except for a smattering of employees who work at the airport fuel farm and are commonly supervised by ASIG, the two groups have separate chains of command. They work in separate locations at the airport. There is no employee interchange. Although the same individual, ASIG's Regional Human Resource Manager Traci Zibkowski, oversees personnel matters at both ASIG's and Signature's Detroit installations, the Signature and ASIG sides of the airport operation are superintended by separate ASIG regional vice presidents.

The Board's contract-bar doctrine is intended to balance the statutory policies of stabilizing labor relations and facilitating employees' exercise of free choice in the selection or change of a bargaining representative. ***Direct Press Modern Litho***, 328 NLRB 860 (1999). The burden of proving that a contract is a bar is on the party asserting the doctrine. ***Roosevelt Memorial Park***, 187 NLRB 517 (1970). The seminal case establishing the Board's substantive and technical contract-bar rules is ***Appalachian Shale Products***, 121 NLRB 1160 (1958). In that case, the Board held that only a written contract fully executed prior to the filing of a petition may serve as a bar. The signed writing setting forth the parties' agreement may be a formally executed booklet or a series of informal written exchanges initialed by the parties to signify mutual acceptance of terms. ***Pontiac Ceiling & Partition Co.***, 337 NLRB No. 16 (Dec. 20, 2001). In no case, however, has the Board ascribed bar quality to an unsigned agreement. ***Seton Medical Center***, 317 NLRB 87 (1995).

ASIG has not entered into any collective bargaining agreement with Local 299. The only written agreement proffered at the hearing is the 1998 – 2001 contract between Signature and Local 299, extended through January 2003, which ASIG never signed. Local 299 contends that ASIG assumed Signature's labor contract by virtue of the extension agreement dated June 24, 2002. However, assumption must be express and in writing for contract bar purposes. ***General Extrusion Co.***, 121 NLRB 1165, 1168 (1958); ***Jolly Giant Lumber Co.***, 114 NLRB 413, 414 (1955). Local 299's theory fails not only because ASIG is not a signatory to the extension or any other purported assumption document, but also because the language of the extension speaks of recognition rather than contract assumption.[4]

[4] That Signature's signatory to the June 24, 2002 agreement may simultaneously have been an agent of Signature and ASIG is immaterial. The issue is whether ASIG expressly and in writing assumed Signature's contract. It patently did not.

Local 299 suggests that ASIG is obligated as Signature's putative joint employer to assume Signature's contract, or, alternatively, that Signature is contractually bound by its successorship clause to assure that ASIG does so. First, the record does not establish that ASIG and Signature constitute joint employers, as the evidence is insufficient that they co-determine the wages, hours, and working conditions of the petitioned-for ASIG employees. Second, even if the contractual duties to which Local 299 adverts do exist, they arise under the Act's unfair labor practice provisions of Sections 8(a)(5) and 8(d). Representation proceedings are neither intended nor permitted to address unfair labor practice issues. ***Texas Meat Packers***, 130 NLRB 279 (1961). Nor do unfair labor practice arguments excuse non-compliance with the Board's technical contract-bar rules.

Citing ***Westwood Import Co. v. NLRB***, 681 F.2d 664 (9th Cir. 1982), Local 299 maintains that there is a "continuity of enterprise" between Signature and ASIG which supports the application of contract bar. Local 299 misconstrues the case. In ***Westwood***, an employer under union contract relocated its operation and thereafter withdrew recognition from the union. The court held, in agreement with the Board, that the relocation did not defeat the viability of the parties' contract. Although the court referred to this result as an application of the Board's contract-bar doctrine, in fact the case turned on the Section 8(a)(5) question of whether the employer could permissibly withdraw recognition while the parties' contract was in effect. ***Westwood*** does not offer an instructive analysis because, as explained above, ASIG's duties under Section 8(a)(5) are not in play here. Nor does ***Westwood*** offer comparable facts. Unlike the employer in ***Westwood***, ASIG is not a signed party to any labor contract, and its anticipated merger with Signature, unlike the consummated relocation in ***Westwood***, has not yet materialized.

The absence of ASIG's signature on any document setting forth the petitioned-for employees' terms and conditions of employment precludes a finding of contract bar.[5]

5. Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time fuelers, GSE fuelers, GSE mechanics, and quality control technicians employed by the Employer at its facility at Detroit Metropolitan Airport, currently performing

[5] An additional ground pointing to the same conclusion, but neither addressed nor litigated by the parties, is that Signature's and Local 299's contract, although extended multiple times pending negotiations, lapsed as a bar after three years on November 23, 2001, prior to the filing of the petition. ***General Cable Corp.***, 139 NLRB 1123 (1962).

> work for Northwest Airlines, KLM Airlines, Mesaba Airlines, Pinnacle Airlines, and Champion Airlines; but excluding all other employees, office clerical employees, private secretaries, and guards and supervisors as defined in the Act.

Those eligible to vote shall vote as to whether or not they wish to be represented for collective bargaining purposes by A.S.I.G. Employees Association.[6]

Dated at Detroit, Michigan, this 5th day of February, 2003.

/s/ Stephen M. Glasser

(SEAL)

Stephen M. Glasser, Regional Director
National Labor Relations Board
Region Seven
Patrick V. McNamara Federal Building
477 Michigan Avenue – Room 300
Detroit, Michigan 48226-2569

Classification

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[6] Local 299 may obtain a place on the ballot by submitting a showing of interest, which may consist of one signed authorization card, by no later than February 19, 2003.

I note that neither the parties nor the hearing officer raised or litigated the issue of whether the petition is premature in view of the potential merger of the Signature and ASIG workforces. I therefore do not decide this case upon that basis. ***Four Seasons Solar Products Corp.***, 332 NLRB No. 9, slip op. at 4 (Sept. 15, 2000). However, upon motion by any party that a merger has been completed, I may consider the effect of such changed circumstances upon this case.